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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/531,572	04/18/2005	Takashi Kenmoku	03500.017652.	2325
5514 7590 12/16/2009 FITZPATRICK CELLA HARPER & SCINTO 1290 Avenue of the Americas NEW YORK, NY 10104-3800				
EXAMINER				
HANLEY, SUSAN MARIE				
ART UNIT		PAPER NUMBER		
1651				
MAIL DATE		DELIVERY MODE		
12/16/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/531,572

**Applicant(s)**

KENMOKU ET AL.

**Examiner**

SUSAN HANLEY

**Art Unit**

1651

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 September 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 21-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 25-35 is/are allowed.
- 6) ☒ Claim(s) 21 and 24 is/are rejected.
- 7) ☒ Claim(s) 22 and 23 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Claims 21-35 are under examination.

#### ***Withdrawal of Rejections***

The rejections not explicitly restated below are withdrawn due to Applicant's response in the amendment filed 9/16/09.

#### ***Double Patenting***

Claims 21 and 24 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 15 of U.S. Patent No. 6,911,520.

Claims 21 and 24 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 8 of U.S. Patent No. 6,908,721.

Claims 21 and 24 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 2 of U.S. Patent No. 6,645,743.

Claims 21 and 24 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 2 of U.S. Patent No. 6,649,380.

Applicant argues that the filing of a terminal disclaimer at this time is premature and expensive.

Applicant's argument is not directed to the factual basis of the rejection and is, therefore, non-persuasive. The rejections stand for the reasons of record.

Claims 22 and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Claims Suggestions***

The following claims suggestions are made:

In claim 21, at line 5, it is suggested that the phrase "wherein x is one or more integers within" be replaced by "wherein x is an integer within".

In claim 22, at line 2, it is suggested that "further" be inserted before "comprising".

In line 22, at line 5, it is suggested that the phrase "wherein y and z are one or more integers within" be replaced by "wherein y and z are integers within".

In claim 23, at line 2, it is suggested that the phrase "claim 21, comprising simultaneously, in at least" be replaced by "claim 21, further comprising, in at least".

In claim 23, at line 8, it is suggested that the phrase "wherein k is one or more integers within" be replaced by "wherein k is an integer within".

In claim 23, at line 10, it is suggested that the phrase "wherein m is one or more integers within" be replaced by "wherein m is an integer within".

In claim 25, at line 5, it is suggested that the phrase "wherein x is one or more integers within" be replaced by "wherein x is an integer within".

In claim 25, at line 13, it is suggested that the phrase "wherein x is one or more integers with" be replaced by "wherein x is an integer within".

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In claim 26, at line 3, it is suggested that "further" be inserted before "comprises".

In line 26, at line 5, it is suggested that the phrase "wherein y and z are one or more integers within" be replaced by "wherein y and z are integers within".

In claim 28, at line 3, it is suggested that "polyhydroxyalkanoate comprising simultaneously, in at least" be replaced by "polyhydroxyalkanoate further comprising, in at least".

In claim 28, at line 9, it is suggested that the phrase " wherein m is one or more integers within" be replaced by "wherein m is an integer within".

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to SUSAN HANLEY whose telephone number is (571)272-2508. The examiner can normally be reached on M-F 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Susan Hanley/  
Examiner, Art Unit 1651

/Sandra Saucier/  
Primary Examiner, Art Unit 1651